



OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS  
JOHN CORNYN

July 7, 2000

Mr. Thomas E. Myers  
Brackett & Ellis  
Attorneys and Counselors  
100 Main Street  
Fort Worth, Texas 76102-3090

OR2000-2543

Dear Mr. Myers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136860.

The Keller Independent School District (the "district"), which you represent, received a request for references obtained by the district in connection with a substitute teacher's application for a permanent position. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code and section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that the references contained in exhibits C, D, and E are exempt from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential."<sup>1</sup>

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<sup>1</sup>Your brief to us states that the district agreed that the information will be treated as confidential; however, this office has long held that a governmental body's promise to keep confidential information that is subject to the Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). Thus, information subject to the Act is not confidential simply because the party submitting it anticipates or requests that it be kept confidential.

This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). Because the requested documents “evaluate” the teacher’s performance, we find that the district must withhold the requested information pursuant to section 552.101 of the Government Code in conjunction with 21.355 of the Education Code.

Because we find section 552.101 dispositive, we do not address your section 552.111 claim. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

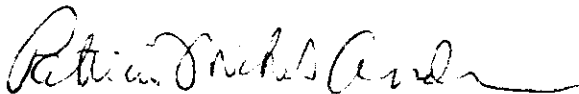
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 136860

Encl. Submitted documents

cc: Ms. Barbara Wells  
1501 Rockwood  
Keller, Texas 76248  
(w/o enclosures)